



**UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/160,618	09/24/98	CHRISTENSEN	E 73690

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HM12/1024

EXAMINER

WARE, T

ART UNIT

PAPER NUMBER

1615

DATE MAILED: 10/24/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/160,618

Applicant(s)

CHRISTENSEN, EDWIN H.

Examiner

Todd D Ware

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- 1) ☐ Responsive to communication(s) filed on 09 August 2000.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some * c) ☐ None of the CERTIFIED copies of the priority documents have been:
1. ☐ received.
2. ☐ received in Application No. (Series Code / Serial Number) _____.
3. ☐ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____.

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DETAILED ACTION

Receipt of response filed 6-30-00 and supplemental amendment filed 8-9-00 is acknowledged. Claim 6-8 have been canceled and claims 1, 5, 9, 12, 17 have been amended as requested. New claims 24-25 have been added. New claims 26-38 have **NOT** been added. Claims 27-38 were not submitted with the amendment filed 8-9-00 and claim 26 was not entered because "(once amended)" was included in the claim when the claims was a new claim to be entered. Accordingly, claims 1-25 are pending.

Claim Objections

Claims 1-11, 24 are objected to because of the following informalities:
"polyhydric" is mis-spelled in the amended claim 1. Appropriate correction is required.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims ^{1-5, 9-25} 1-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borkan et al (4,935,243; hereafter '243).

'243 teaches chewable, soft gelatin capsules comprising starch, polyhydric alcohol, a sweetener, fats or oils, a sweetener, and about 5-7% water (in the fill) or 15-30% water (in the shell). The term "carrier" in the instant claims is a broad term and is

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interpreted here as pertaining to the capsule shell of '243. The amounts of ingredients of '243 are either within or overlap applicant's claims. Adjustment of these amounts is within the ken of one skilled in the art in an effort to arrive at the most desirable chewable formulation. '243 teaches that the sweetener is saccharin, however it would be obvious to one skilled in the art at the time of the invention to substitute sugar for the saccharin based upon availability of the sweetener.

3. Claims ^{1-5, 9-25} 1-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borkan et al (4,935,243; hereafter '243).in view of Seth (4,795,643; hereafter '643).

'243 teaches chewable, soft gelatin capsules comprising a thickener, polyhydric alcohol, a sweetener, fats or oils, a sweetener, and about 5-7% water (in the fill) or 15-30% water (in the shell). The term "carrier" in the instant claims is a broad term and is interpreted here as pertaining to the gelatin fill of '243. Adjustment of these amounts is within the ken of one skilled in the art in an effort to arrive at the most desirable chewable formulation. '243 teaches that the sweetener is saccharin, however it would be obvious to one skilled in the art at the time of the invention to substitute sugar for the saccharin based upon availability of the sweetener. '234 does not provide examples of the contemplated thickeners.

'643 is relied upon for teaching that starch is a well-known thickener in the contents of pharmaceutical capsules (see C5, L8-19).

Accordingly, it would have been obvious to one skilled in the art at the time of the invention to include starch as a thickener in the composition of '243 in an effort to

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increase the viscosity of the gelatin fill of '243 and the expectation that starch is a well-known thickening agent in the art.

Response to Arguments

Applicant's arguments with respect to claims ^{1-5, 9-23}1-23 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Todd D Ware whose telephone number is (703) 305-1700. The examiner can normally be reached on 8:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K Page can be reached on (703)308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are (703) for regular communications and (703) for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

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October 20, 2000